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Docket No.: 10655.7700

Remarks

Applicant hereby responds to the Final Office Action mailed April 7, 2002 regarding the above-referenced patent application, of which this Response is being filed within TWO MONTHS, so Applicant requests an Advisory Action if the Examiner does not believe this Response puts the application in condition for allowance. The patent application was submitted with claims 1-10 and the Examiner rejects claims 1-10.

The Examiner rejects claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Musmanno (4,346,442) in view of Musmanno (4,774,663) and Card News. Applicant respectfully traverses this rejection.

Contrary to the Examiner's statements, Applicant is NOT simply claiming a credit card system used in conjunction with a brokerage system. Rather, the presently claimed invention uses hierarchy rules for dividing a combined remittance (not a charge to a charge card or borrowed funds) to a charge card billing system (not at the brokerage system) among debts related to financial events and among payments to investment products (which may include its own hierarchy for further distribution of funds to particular investments). Moreover, while Applicant acknowledges that the Musmanno system is a creative financial concept, it is simply not the present invention, and in fact, teaches a completely different purpose. Furthermore, the Examiner explains various features of brokerage systems (e.g., dividing funds within a brokerage system), and while those features may or may not be small components within the present invention, the presently claimed invention goes way beyond the prior art features of brokerage systems.

Particularly, the Examiner asserts that it is inherent that a "customer will provide detailed advanced instructions" regarding the distribution of brokerage funds "through whatever source". While the cited references may disclose instructions to the brokerage regarding dividing funds, the present invention discloses billing and accepting remittances using a charge card billing system. In other words, the complex software and hardware which was needed to be developed to implement the present invention operates initially at the charge card billing system. In contrast, the Musmanno references disclose a system wherein the brokerage system includes software to monitor checking systems and charge card systems (see Applicant's previous

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Response which details that the Musmanno system analyzes and utilizes the subscriber's excess credit limit to acquire investments). The Musmanno references do not disclose a combined remittance being divided at a charge card billing system and sent to a brokerage account. While the Examiner emphasizes brokerage account operations with funds "through whatever source" and the Card reference discloses the use of a charge card to pay for investments, neither reference goes to the next level because neither reference discloses the division of a combined remittance using hierarchy rules at the charge card billing system ("accepting remittances, using said charge card billing system, from users, a portion of said remittances defined as funds to satisfy debts related to said financial events and investment funds to be applied to said investment products" or "applying hierarchy rules to said combined remittances to determine a portion to be allocated to said investment funds", as in independent claim 6).

Moreover, while the Card reference discloses using a charge card (e.g., borrowed funds) to pay for an investment fund, the pending claims do not include the purchase of investment funds using the charge card to incur a charge for the investment funds or the use of borrowed funds to purchase investment funds. Rather, the presently claimed invention uses the established charge card billing system to accept a combined remittance from the user which includes funds which are in addition to the funds for paying off any portion of outstanding charge card debt. The additional funds received in the presently claimed system do not include an extension of credit by the present system; rather, the funds are transmitted to the investment system and investments are purchased only after the billing system receives the additional payment from the user.

Research shows that, over the long term, investors who invest on a regular basis outperform those who try to time the market or who invest sporadically. As such, in the past, cardmembers were demanding a convenient way to "dollar cost average" or invest a certain amount every month. Accordingly, the Applicant developed the presently claimed invention to allow cardmembers, for the first time, to submit a combined remittance. Significantly, the novelty of the presently claimed invention is highlighted by the fact that Applicant has spent many years negotiating with the Securities and

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Exchange Commission (SEC) to obtain an exemptive order for the acceptance of a combined remittance with additional funds through a charge card billing system for distribution to a brokerage account because the procedure has never been previously implemented or disclosed. **The SEC stated that the presently claimed system did not satisfy the applicable securities law requirements; however, the SEC issued a highly unusual exemptive order for the first time for strong public policy reasons.** Further, the SEC did not require the Applicant to register as a broker-dealer because the system would not send the funds to the brokerage system until after receiving the combined remittance at the billing system and dividing the funds according to the hierarchy rules. Accordingly, the prior art systems cited by the Examiner in the references and Official Notice **could not have previously offered a similar SEC compliant service to the presently claimed invention.**

Furthermore, the Examiner emphasizes that it is inherent in a brokerage relationship that the customer provides detailed advanced instructions over the phone about the distribution of investment funds only. However, the presently claimed invention discloses pre-established, automatic hierarchy rules at the charge card billing system for dividing the combined remittance which includes charge card funds and investment funds, wherein the acceptance of a combined remittance and implementation of the hierarchy rules include complex software and hardware additions to the system. In other words, no prior art system or reference cited by the Examiner discloses or teaches a system wherein a customer could contact a charge card billing system to establish hierarchy rules for accepting a combined remittance and dividing the combined remittance among charge card funds and investment funds.

The Examiner next states that it would have been obvious to utilize a charge card system for recording brokerage transactions and funding investments. Applicant asserts that the Examiner's statement is pure hindsight reasoning and the only motivation of record is found in Applicant's own Specification. To the extent the Examiner is taking Official Notice with respect to motivation known to those skilled in the art at the time the invention was made, Applicant hereby seasonably challenges such Official Notice and respectfully requests supporting documentation of such motivation. Moreover, significantly, only after Applicant disclosed the invention to the SEC did the

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SEC for the first time consider the procedure. In other words, it was not obvious to develop such a system because, *inter alia*, the SEC did not previously consider the issue in its rules and no other entity previously submitted a request to approve such a procedure.

Moreover, the Examiner asserts that it is keeping with "long standing industry practice" to add the teachings of Musmanno with using a conventional credit card using borrowed funds as the source of funds for investment. However, as discussed above, Musmanno, by itself and regardless of what type of funds are used or any other prior art reference that is combined with Musmanno (e.g., borrowed funds as in Card), does not disclose Applicant's claimed invention. Moreover, Applicant asserts that any alleged long standing practice would need to disclose receiving combined remittances with additional funds at a billing system and such a practice is pure hindsight reasoning and the only motivation of record is found in Applicant's own Specification. To the extent the Examiner is taking Official Notice with respect to the long standing industry practice known to those skilled in the art at the time the invention was made, Applicant hereby seasonably challenges such Official Notice and respectfully requests supporting documentation of such longstanding practice of receiving combined remittances with additional funds at a billing system.

The Examiner lastly comments that, regardless of the source of funds, by regulation, funds must be credited to certain investments. As discussed above, the presently claimed invention goes beyond any existing "hierarchy" within the brokerage account. Particularly, the presently claimed invention includes receiving additional funds (not borrowed funds) at the billing system (not at the brokerage system), and applying hierarchy rules at the billing system (not at the brokerage system) for the distribution of funds to a brokerage system (which may include its own hierarchy for further distribution of funds to certain investments). As such, "accepting combined remittances, using said charge card billing system, from users, a portion of said combined remittances defined as funds to satisfy debts related to said financial events and investment funds to be applied to said investment products" or "applying hierarchy rules to said combined remittances to determine a portion to be allocated to said investment funds" (independent claim 6 and similar language in

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independent claim 1) is not disclosed or taught in the Musmanno references alone or in combination with Card.

Upon entry of the foregoing amendments, Applicant believes that the application is now in condition for allowance and respectfully requests a Notice of Allowance. Moreover, this Amendment and Response does not incorporate any new matter. However, **this Response is being filed within TWO MONTHS, so Applicant requests an Advisory Action** if the Examiner does not believe this Response puts the application in condition for allowance. Moreover, if the Examiner has any questions or concerns about this Response or the Application, please contact the undersigned attorney at the Examiner's convenience.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached pages are captioned **"VERSION WITH MARKINGS TO SHOW CHANGES MADE"**.

Respectfully submitted,

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Dated: May 27, 2003

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"VERSION WITH MARKINGS TO SHOW CHANGES MADE"

1. A system for funding multiple investment products including:
 - a charge card billing system configured to capture financial event information wherein said billing system comprises:
 - a card account database configured to include [cardholder] user accounts;
 - a billing information database configured to include information about [cardholder] user billings;
 - a financial events database configured to include information about [cardholder] user financial events;
 - a remittance database configured to include information about [cardholder] user combined remittances, wherein said combined remittance includes a portion of funds to satisfy debts related to said financial events and a portion of funds for investment;
 - a payment hierarchy system for establishing rules for distributing said combined remittance to said financial events and to an investment brokerage system;
- and,
 - an investment broker system in communication with said billing system wherein said investment broker system comprises:
 - an investment instruction arrangement database configured to include [cardholder] user investment instruction information;
 - an investment account database configured to include multiple investment products; and,
 - an investment payment hierarchy system for establishing rules for distributing funds to said investment products.
6. A method for funding multiple investment products including the steps of:
 - providing a charge card billing system through which [cardholders] users charge financial events;
 - capturing, using said billing system, financial event information;

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providing an investment broker system in communication with said billing system, wherein said investment broker system includes multiple investment products through which [cardholders] users can select investments for purchase; billing said [cardholders] users for said financial events and said investment products;

accepting combined remittances from users, using said charge card billing system, [from cardholders.] a portion of said combined remittances defined as funds to satisfy debts related to said financial events and investment funds to be applied to said investment products;

applying hierarchy rules to said combined remittances to determine a portion to be allocated to said investment funds;

transferring said investment funds to said investment broker system; applying payment hierarchy rules to said investment funds; and, distributing said investment funds to said investment products in accordance with said payment hierarchy rules.